Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering	)	
Advanced Services Capability	)	CC Docket No. 98-147
	)	
Implementation of the	)	
Local Competition Provisions	)	CC Docket No. 96-98
of the Telecommunications Act of 1996	)	
	)	

OPPOSITION OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
TO THE PETITIONS FOR RECONSIDERATION
OF BELL ATLANTIC AND BELLSOUTH

The Competitive Telecommunications Association ("CompTel")[1] submits this opposition to the Petition for Clarification and/or Reconsideration by Bell Atlantic and the Petition for Reconsideration by BellSouth both filed on February 9, 2000. Both parties seek reconsideration of the Commission's Report and Order in the above referenced proceeding.[2] The Commission should deny both Petitions, because Commission relief is not necessary to protect these parties from the potential harms that they identify as the basis for their requests.

[1] With over 300 members, CompTel is the leading industry association representing competitive communications firms and their suppliers. CompTel's member companies include the nation's leading providers of competitive local exchange services and span the full range of entry strategies and options. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, both today and in the future.

[2] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Fourth Report and Order*, CC Docket No. 96-98, FCC 99-355 (rel. December 9, 1999) ("*Line Sharing Order*" or "*Order*").

For similar reasons, however, the Commission should grant AT&T's Petition for Expedited Clarification or, in the Alternative, for Reconsideration and the Petition for Clarification of MCI WorldCom, both of which were also filed on February 9, 2000. Unless the FCC acts on these petitions, consumers in many areas will lose competitive alternatives as a result of attempts by certain large ILECs to implement the Commission's Line Sharing Order in a manner that will reduce, rather than stimulate, competition for both advanced data services and innovative voice services. CompTel will provide the Commission with Reply Comments in support of these petitions, if they are, in fact, opposed by any party.

I. The Commission Should Reject BellSouth's Petition for Reconsideration

BellSouth asks the Commission for limited relief. Specifically, the Commission's proposed rules implementing this order create the presumption that an advanced services loop technology is acceptable for deployment if the technology "has been successfully deployed by any carrier without significantly degrading the performance of other services."[3] BellSouth in its Petition contends, contrary to the plain language of the Commission's new rule, that the effect of this presumption would be that its own network and customers would be at the mercy of other, perhaps less vigilant, states.[4] BellSouth further contends that, once another state approves a loop technology, BellSouth will be

[3] This presumption may be used as a basis for a further demonstration to a state commission, in which the requesting carrier carries the burden of proof, that the proposed technology is acceptable for deployment. *Id.*, Appendix B-3, quotation from new §51.230(a)(3).

[4] Once a state, a standards body, or the FCC has approved a technology, the incumbent LEC may not refuse to allow an interconnecting carrier to deploy that technology unless the incumbent can demonstrate that the proposed technology will significantly degrade the performance of existing services. *Id.*, § 51.230(b).

forced to wait until its customers experience "significant degradation" before seeking redress, even if the technology poses obvious and avoidable interference problems.

BellSouth's Petition is as meretricious as the litigation it asks the Commission to multiply. Proposed new Section 51.230(c) requires any carrier seeking to rely on successful past deployment to affirmatively demonstrate the safety of the proposed technology to the satisfaction of a state commission. Only then is the requesting carrier entitled, in subsequent states, to transfer the burden of proof to the ILEC. BellSouth's contentions to the contrary, there does not appear to be any plausible scenario, under the Commission's proposed rules, in which an ILEC will ever be denied the opportunity to demonstrate that any proposed technology will significantly degrade other services, if deployed in its network. BellSouth's Petition for Reconsideration asks the Commission to rely on baseless hypothetical concerns to eliminate the regulatory economies created by the Commission by the introduction of efficient and fair presumptions.

II. Bell Atlantic's Petition Is Equally Baseless and Should, Therefore, Be Denied

Bell Atlantic asks the Commission, either through a clarification or a reconsideration of the Line Sharing Order, to make the following findings in its favor, *i.e.*, that: 1) data carriers do not need access to the whole loop in order to perform testing on the high frequency portion of the loop; 2) as a matter of universal fact, loops over 18,000 feet cannot be conditioned without degrading voice service; 3) "the industry" may delay implementing the Commission's Order; and 4) the FCC should not allow states to order segregation of existing interfering technologies.

First, Bell Atlantic asks the Commission to explain that data carriers should not receive access to the entire loop for testing purposes, despite the Commission's clear

findings on the record. Bell Atlantic claims that a "straightforward" reading of the Order, in conjunction with the proposed new line sharing rules, creates confusion as to whether the ILEC must provide line sharing carriers access to the whole loop for testing purposes. Bell Atlantic reasons that these carriers should, as a logical matter, only have the ability to test that portion of the loop over which they propose to provide data services, and urges the Commission to make such a clarification.[5]

Bell Atlantic's assertions of "confusion" are nothing more than a veiled excuse to ask the Commission to make a finding it declined to make in the underlying proceeding. Other than the Commission's explicit rejection of Bell Atlantic's proffered "clarification" in ¶ 113 of the Order, there is nothing in the Order or the proposed rules that would suggest the Commission *ever* intended to limit competitor's testing access to the shared loop. Both the Order and proposed rules refer to the "loop facility" (not any portion of the loop), and require that access for testing be non-discriminatory.[6] The Order and proposed rules are clear that competitors are entitled to the same access, for testing purposes, that the ILEC provides itself. Absent any issue of confusion no need for clarification exists.

Second, Bell Atlantic requests that the Commission determine that loops over 18,000 feet are ineligible for line sharing if "conditioning" these loops for shared line data services would require the removal of devices necessary to provide voice service. Bell Atlantic urges the Commission to make such a finding purportedly in order to mitigate unnecessary and wasteful litigation on a state by state basis.

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[5] Bell Atlantic Petition, p.3.

[6] *Order*, ¶¶ 112-118; see also, *Id.*, Appendix B-2, 3.

This request seems harmless enough. If the electronic devices are *necessary* to ensure adequate voice service, and line sharing *only can* be accommodated if these devices are removed (thereby jeopardizing voice service), then, clearly the ILEC has no obligation to jeopardize existing voice service to accommodate line sharing. However, by presuming the necessity of the interfering devices to provide voice service, and also presuming that line sharing is impossible with any additional devices on the loop, Bell Atlantic has presented the Commission with an attractive, yet ultimately specious, tautology. The Commission should reject Bell Atlantic's request.

The Commission already has determined that if loops over 18,000 feet require certain devices in order to ensure adequate voice quality, then these devices are not required to be removed simply to facilitate line sharing.[7] Thus, the only effect of the Commission adopting Bell Atlantic's proposed finding of "fact" is that it would result in the ILEC being the sole arbiter of whether the electronic devices, which impede line sharing, are "necessary" to ensure voice quality.

Under Bell Atlantic's proposal, consumers served by long loops would, *by regulatory fiat*, be foreclosed from access to advanced services on an economical shared line basis, and immune to technological innovations that may facilitate such service in the future. If Bell Atlantic is correct, *i.e.*, that line sharing on loops over 18,000 feet is contrary to natural law, then it is unlikely that data CLECs, or state commissions, will invest the resources to successively litigate claims with such poor prospect for success. CompTel counsels the Commission that its Order was correct—factual inquiries would best be resolved on a case specific basis.

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[7] *Order*, ¶ 85.

In its third request, Bell Atlantic asks the Commission to clarify that "the industry" can, through mutual agreement, decide on an alternative deployment schedule that presumably would be longer than the 180-day schedule ordered by the Commission. Bell Atlantic's request is nothing more than a naked attempt to persuade the Commission not only to delay implementation of the *Line Sharing Order*, but also to remove Bell Atlantic's underlying legal obligations as well.[8]

Regrettably, the Commission cannot legally accede to Bell Atlantic's request for "clarification." Congress was quite clear in the Act that § 251(c) obligations, such as those articulated here, are obligations of the ILEC, and not "the industry." The Commission cannot, through "clarification" of its Order, transfer this statutory obligation of the ILEC to anyone else, much less a group as inchoate as "the industry." Moreover, Congress also was clear that the Commission cannot "forbear" from enforcing Section 251(c) obligations until it has determined that those obligations have been "fully implemented." 47 U.S.C. § 160(d). Therefore, the Commission must reject, and cannot grant, Bell Atlantic's request.

Finally, Bell Atlantic requests the Commission to revisit its determination that states should have the discretion to resolve disputes among interfering technologies, including the ability to segregate, or sunset, older technologies in order to facilitate greater use of newer, shared-line, technologies.[9] Bell Atlantic requests that the FCC allow "market forces" to determine the disposition of these disputes. Bell Atlantic also claims that, by providing states with the flexibility to segregate, or sunset, older,

[8] Bell Atlantic Petition, pp. 6-7.
[9] *Order*, ¶ 218.

interfering technologies, like the AMI T1, the Commission has unacceptably departed from its prior precedent.[10]

The Commission's determination in the Order to allow states the discretion and flexibility to act as neutral arbiters of interference disputes recognized that a rigid national rule may be too inflexible to provide the least disruptive outcome in all circumstances.[11] Similarly, leaving the issue to "market forces" would place too much discretion with the ILECs, who have limited incentives to innovate and accommodate new technologies given their "substantial base of known disturbers."[12] Therefore, by allowing states to flexibly resolve disputes guided by a national policy favoring multi-carrier, multi-service deployment, the Commission attempted to accommodate the widest range of deployment options with the least impact on existing technologies.[13]

The Commission's finding that the AMI T1 technology was a "known disturber," which potentially could impede the deployment of new technologies, was a reasonable finding of fact supported by the record in this case as well as in previous Commission inquiries on this subject.[14] Whether it deviates from established Commission precedent is immaterial, as the Commission may allow its policies to evolve with changes in

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[10] Bell Atlantic Petition, p. 9.
[11] *Order*, ¶ 219.
[12] *Id.*
[13] "We believe that our policies here strike the appropriate balance between protecting the integrity of the network and promoting competitively neutral deployment of innovative technologies." *Id.*, ¶ 211.
[14] *Id.*, ¶ 208, explaining that the exception adopted by the Commission in the case of "known disturbers" prevents the undue protection of noisier technologies and prevents the undue preclusion of newer, more compatible, technologies; ¶¶ 212-214, referring to previous inquiry on the subject of adjacent binder group disturbance by AMI T1 technology in *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999).

technology. Moreover, the Commission explained its reasoning, based on facts in the record, and within its duty to execute the goals of Congress pursuant to Section 706 of the Act. The Commission's decision is, therefore, reasonable and requires no clarification on this issue.

CONCLUSION

Because neither BellSouth, nor Bell Atlantic, have demonstrated a basis for the Commission to grant their requests for reconsideration or clarification, CompTel requests that the Commission deny these above-referenced petitions.

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Certificate of Service

I, Monika Schoellhorn, Government Affairs Assistant for CompTel, do hereby certify that on this 22nd day of March, 2000, copies of the foregoing "Motion For Leave To Intervene" and "Disclosure of Interests" were delivered by first-class, postage pre-paid mail upon the following:

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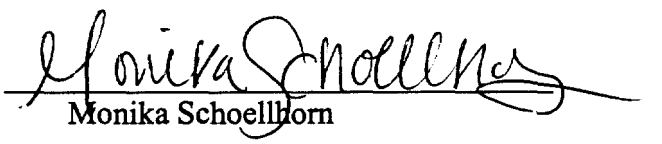

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